

Senate Bill 462

By: Senators Butterworth of the 50th, Smith of the 52nd, Mullis of the 53rd, Hooks of the 14th, Chapman of the 3rd and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources, so as to provide a short title; to provide a statement of policy; to define certain terms; to provide for applicability; to provide for the permitting of interbasin transfers of water; to provide considerations; to provide for procedures; to provide for emergencies; to provide for prohibitions; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources, is amended by adding a new article to read as follows:

"ARTICLE 11

12-5-600.

This article shall be known and may be cited as the 'River Basin Protection Act.'

12-5-601.

Georgia's river systems and aquifers support communities, local and regional economies, and diverse ecosystems. Maintaining natural flows throughout Georgia to the maximum extent practicable, while ensuring a safe yield, is essential for the overall health of its water resources and the economies that depend on them. It is therefore declared to be the policy of the State of Georgia to approximate natural flow levels and rates in all waters of the state to the maximum extent practicable, to protect against over-allocations and under-allocations of water in all river systems and aquifers or portions thereof in the state to the maximum extent practicable, and to minimize consumptive uses of water to the maximum extent practicable.

12-5-602.

As used in this article, the term:

(1) 'Basin' means the Altamaha, Chattahoochee, Coosa, Flint, Ochlockonee, Ocmulgee, Oconee, Ogeechee, St. Marys, Satilla, Savannah, Suwannee, Tallapoosa, or Tennessee River Basin.

(2) 'Biological integrity' means the maintenance of water in a water source in the volume necessary to support and maintain wetlands and wildlife, including fish, flora, and fauna, insofar as protection of such is required by federal or state laws or regulations.

(3) 'Chemical integrity' means the maintenance of water in a water source in the volume necessary to enable such water source to achieve the water quality standards prescribed for the water source by federal or state laws or regulations in light of authorized effluent discharges and other expected impacts on the water source.

(4) 'Consumptive use' means any use of water that is not a nonconsumptive use, including, but not limited to, evaporation or the incorporation of water into a product or crop.

(5) 'Department' means the Department of Natural Resources.

(6) 'Director' means the director of the division.

(7) 'Division' means the Environmental Protection Division of the department.

(8) 'Donor basin' means a river basin from which a withdrawal or diversion of water occurs in an interbasin transfer.

(9) 'Ground water' shall be defined as in paragraph (6) of Code Section 12-5-92.

(10) 'Interbasin transfer' means the withdrawal, diversion, or pumping of surface water from one river basin, or the withdrawal or pumping of ground water from a point located within or beneath one river basin, and discharge of all or any part of the water in or beneath a river basin different from the basin of origin.

(11) 'Nonconsumptive use' means a use of withdrawn water in such a manner that it is returned to its waters of origin at or near its point of withdrawal without substantial diminution in quality or quantity and without resulting in or exacerbating a low flow condition.

(12) 'Physical integrity' means the volume of water in a water source necessary to:

(A) Support commercial navigation of the water source as required by federal or state law or regulation;

(B) Preserve natural, cultural, or historic resources as determined by or as required by federal or state law or regulation;

(C) Provide adequate recreational opportunities to the people of Georgia; and

(D) Prevent serious depletion or exhaustion of the water source.

(13) 'Receiving basin' means a river basin to which all or a portion of water from another river basin is diverted in an interbasin transfer.

(14) 'Safe yield' means the amount of water in a water source available for withdrawal without impairing the long-term utility of the water source, including the biological integrity, chemical integrity, and physical integrity of the source, as determined by comparing the natural and artificial replenishment of the water source to existing or planned consumptive and nonconsumptive uses.

(15) 'Waters of the state' shall be defined as in paragraph (13) of Code Section 12-5-22.

12-5-603.

(a) The provisions of this article shall apply to:

(1) Any proposed new interbasin transfer permits; and

(2) Any modifications or renewals of existing water withdrawal or discharge permits that include an interbasin transfer.

(b) The provisions of this article shall not apply to permits for the withdrawal of water for agricultural purposes if the contiguous permitted area falls within two basins.

12-5-604.

No interbasin transfer shall be allowed without a permit from the division. Any person seeking to make an interbasin transfer of more than 100,000 gallons of water per day shall apply to the director for a permit for such transfer. When feasible, the nonconsumptive portion of the interbasin transfer shall be returned to the basin of origin. Water users receiving water as the result of the proposed interbasin transfer shall implement water conservation procedures in accordance with the state water conservation implementation plan or other conservation measures recommended by the department, and must demonstrate that there are no cost-effective alternatives to the interbasin transfer.

12-5-605.

(a) The director shall issue or deny any interbasin transfer permit applied for in accordance with the provisions of this article. Any such interbasin transfer permit shall be issued for a term of no more than ten years; provided, however, that the director shall review each plan at the end of the fifth year after its issuance or renewal and may make modifications as provided in this Code section.

(b) The regulation of interbasin transfers shall be informed by scientific knowledge, must respect natural systems, and must protect the basins of origin and the receiving basins. When modifying an existing interbasin transfer permit or issuing a new interbasin transfer

permit, the director shall indicate in the permit the following provisions, terms, and conditions:

(1) Donor basin considerations, including but not limited to:

(A) The safe yield of the proposed withdrawal and the stream flow of the donor basin, with special consideration for dry years and low-flow conditions;

(B) The current and reasonably foreseeable future water needs of the donor basin, with special consideration for dry years and low-flow conditions;

(C) Protection of water quality in the donor basin, with special consideration for dry years and low-flow conditions;

(D) The number of downstream river miles from which water will be diverted as a result of the transfer; and

(E) The connection between surface water and ground water in the donor basin and the effect of the proposed transfer on either or both;

(2) Receiving basin considerations, including but not limited to:

(A) Determination of whether or not the applicant's proposed use is reasonable, including consideration of whether the applicant has previously implemented vigorous water conservation practices and achieved reasonable water conservation goals;

(B) Assessment of the waste-water treatment capacity of the receiving basin;

(C) The supply of water presently available to the receiving basin as well as the estimates of overall current water demand and the reasonable foreseeable future water needs of the receiving basin;

(D) The beneficial impact of any proposed transfer and the demonstrated capability of the applicant to effectively implement its responsibilities under the requested permit;

(E) The impact of the proposed transfer on water conservation;

(F) The applicant's efforts to explore all reasonable options for use of reclaimed water and recycling of available resources to meet the needs of the receiving basin; and

(G) Assessment of the adequacy of treatment capacity and current water quality conditions;

(3) Considerations affecting both basins, including but not limited to:

(A) The economic feasibility, cost effectiveness, and environmental effects of the proposed transfer in relation to alternative sources of water supply;

(B) The cumulative effects of the current and proposed interbasin transfers in each basin;

(C) The requirements of the state and federal agencies with authority related to water resources;

(D) The availability of water for responding to emergencies, including but not limited to drought, in the donor basin and the receiving basin;

- 129 (E) The effects, whether beneficial or detrimental, on off stream and in stream uses;
130 (F) The quantity, quality, location, and timing of water returned to the donor basin,
131 receiving basin, and basins downstream;
132 (G) Effects on interstate water use;
133 (H) The cumulative effect on the donor basin and the receiving basin of any water
134 transfer or consumptive use that is authorized or forecast; and
135 (I) Such other factors as are reasonably necessary to carry out the purposes of this
136 chapter; and
137 (4) Other considerations, including but not limited to:
138 (A) The location of the withdrawal;
139 (B) The authorized amount of the withdrawal and the level of consumptive use, if any,
140 and required conservation measures, if any;
141 (C) The dates during which water is to be withdrawn, including any seasonal or shorter
142 variations in the authorized withdrawals or level of consumptive use;
143 (D) The uses for which the water is authorized to be withdrawn;
144 (E) The transfer of water shall be governed by any applicable in-stream flow protection
145 requirements of the division;
146 (F) The amount of return flow required, if any, and the required place of discharge, if
147 any;
148 (G) Any special provisions necessary to promote an adequate water supply for the state
149 or to mitigate any future adverse conditions resulting from the transfer;
150 (H) The installation, maintenance, and use of stream flow monitoring equipment;
151 (I) Any requirements for metering, surveillance, and reporting the director determines
152 to be necessary to ensure compliance with other conditions, limitations, or restrictions
153 of the permit, including consent to inspections or investigations;
154 (J) The establishment and reporting of transfer activities by the permittee;
155 (K) The time within which all necessary construction authorized by the permit must
156 be completed or within which the withdrawal or use of water must begin to be made,
157 with the delay not to exceed five years from the date of issuance of the permit, subject
158 to extension by order of the director upon showing that all due efforts and diligence
159 toward the completion of the work have been made;
160 (L) Any extraordinary withdrawals of the waters of the state necessary for the
161 construction of any facilities necessary to withdraw or use water;
162 (M) Any obligation to restore the lands or waters of the state to their condition prior
163 to the issuance of the permit;
164 (N) The date on which the permit expires; and

(O) Any other conditions, limitations, and restrictions the director determines to be necessary to protect the public interest, the environment and ecosystems, and the public health, safety, and welfare, and to ensure the conservation, proper management, and aesthetic enhancement of the waters of the state.

12-5-606.

After receipt of a completed application and at least 30 days prior to acting on the application, the director shall notify city and county governments and public utilities in each county located entirely or partially within the river basin that is the source of the proposed transfer and the receiving basin and to all persons who have filed a written request with the director that their names be placed on a mailing list for receipt of such notice. Any person desiring to be placed on such mailing list must so request in writing and renew such request in December of each year. The name of any person who has not renewed such request shall be removed from the list. The director shall cause a notice of the proposed interbasin transfer which shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the basin of origin and receiving basin to be published in the legal organ or a newspaper of general circulation in each potentially affected community in the basin of origin and the receiving basin. The director shall call a public hearing if requested by a city or county government or public utility located entirely or partially within a river basin being affected by an interbasin transfer or if requested by 20 or more public citizens. Notice shall be given of the public hearing at least 30 days prior to the hearing.

12-5-607.

In the event an emergency period of water shortage exists within an area of the state, the director may modify or revoke and reissue any interbasin transfer permit subject to the terms of a state drought management plan. The director shall give public notice of any emergency action taken with respect to an interbasin transfer permit to the maximum extent practicable.

12-5-608.

Interbasin transfers of water that occur in connection with mining, conveying, processing, sale, or shipment of minerals or other products transported for further processing or sale shall be exempt from limitations on interbasin transfers provided by this subsection.

196 12-5-609.

197 Surface water contained in any intermediate or product shipped or transported for further
198 processing or for sale shall be exempt from limitations on interbasin transfers provided by
199 this subsection.

200 12-5-610.

201 Nothing in this article shall modify or in any way affect the provisions of subsection (f) of
202 Code Section 12-5-84, which provides that the Metropolitan North Georgia Water Planning
203 District shall neither study nor include in any plan any interbasin transfer of water from
204 outside the district area, and such provisions shall remain in full force and effect.

205 12-5-611.

206 Any person who receives in one county an interbasin or intrabasin transfer of water which
207 originated in a second county is prohibited from transferring any or all of such water by
208 means of pipes, pipelines, conduits, ditches, or canals into a third county, except to satisfy
209 critical needs."

210 **SECTION 2.**

211 All laws and parts of laws in conflict with this Act are repealed.